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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Colusa)

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THE PEOPLE,

Plaintiff and Respondent,

v.

LUIS MANUEL PEREZ,

Defendant and Appellant.

C081047

(Super. Ct. No. CR533383,  
CR53495)

In March 2012, defendant Luis Manuel Perez entered a guilty plea to possession of a controlled substance (Health & Saf. Code, § 11377, subd. (a); unless otherwise set forth, statutory section references that follow are to the Health and Safety Code) (case No. CR533383), and sale or transportation of a controlled substance (§ 11379, subd. (a)). He also admitted an on-bail enhancement (Pen. Code, § 12022.1) (case No. CR53495) all in exchange for dismissal of the remaining counts in both cases.

In August 2012, the court denied probation and sentenced defendant to the midterm of three years for sale or transportation, two years for the on-bail enhancement, and a consecutive one-third the midterm or eight months for possession. The court ordered defendant to serve his sentence in county jail and suspended 1,337 days during which defendant would be on mandatory supervision. (Pen. Code, § 1170, subd. (h)(5)(B).) The court awarded presentence custody credits and imposed various fees and fines.

Defendant violated mandatory supervision in 2013. Mandatory supervision was suspended while defendant entered rehabilitation and was reinstated after he completed rehabilitation.

In 2014, defendant again violated mandatory supervision. Mandatory supervision was reinstated.

In 2015, defendant admitted violating mandatory supervision for the third time. The court revoked and terminated mandatory supervision and denied probation. The trial court reduced defendant's felony possession conviction to a misdemeanor conviction pursuant to Penal Code section 1170.18 in case No. CR533383. The court lifted the stay and ordered defendant to serve the balance of the time imposed on the felony sentence previously imposed for transportation and the on-bail enhancement in case No. CR53495. The court resentenced defendant on misdemeanor possession to an eight-month term to be served consecutive to the felony sentence.

Defendant filed a notice of appeal in case No. CR533383 only. He did not seek a certificate of probable cause. (Pen. Code, § 1237.5.) Defendant did not file a notice of appeal in case No. CR53495. Pursuant to the rule of liberally construing a notice of appeal in favor of its sufficiency (Cal. Rules of Court, rule 8.304(a)(4)), we construe defendant's notice of appeal as including case No. CR53495. The People do not challenge the lack of a notice of appeal in case No. CR53495 and have responded to defendant's contentions on appeal.

Defendant contends (1) his transportation conviction should be reversed because there was no evidence that he transported for sale, (2) his on-bail enhancement must be reversed because his felony possession conviction was reduced to a misdemeanor, and (3) the trial court imposed the same sentence on the misdemeanor possession as it had imposed when the offense was a felony. We reject defendant's contentions.

## DISCUSSION

### I

#### *The Health and Safety Code section 11379, subdivision (a) Conviction*

When defendant entered his plea in 2012, section 11379, subdivision (a) provided, "every person who transports . . . , sells, . . . any controlled substance . . . shall be punished . . . for a period of two, three, or four years." The word "transports" in section 11379 had been interpreted to mean moving illegal drugs from one location to another location, rather than merely held at one location. (*People v. Rogers* (1971) 5 Cal.3d 129, 134-135; *People v. Ormiston* (2003) 105 Cal.App.4th 676, 682; *People v. LaCross* (2001) 91 Cal.App.4th 182, 185.) Effective January 1, 2014, the Legislature added an element to the offense by defining "transports" to mean "transport for sale." (§ 11379, subd. (c), as amended by Stats. 2013, ch. 504, § 2.) A statute lessening punishment is presumed to apply to all cases *not yet reduced to final judgment on the statute's effective date* unless there is a savings clause or its equivalent providing for prospective application. (*In re Estrada* (1965) 63 Cal.2d 740, 744-745, 747-748; emphasis added.)

The trial court imposed sentence on defendant's felony transportation conviction and suspended execution in 2012. Where sentence is imposed and its execution suspended, defendant may appeal from the sentence as a final judgment or from the order granting probation as an order made after judgment. (Pen. Code, § 1203.2, subd. (c); *People v. Howard* (1997) 16 Cal.4th 1081, 1087-1095; *People v. Chagolla* (1984) 151 Cal.App.3d 1045, 1049; Cal. Rules of Court, rule 4.435(b)(2).) Here, defendant did

not appeal and the sentence became the final judgment. (*People v. Ramirez* (2008) 159 Cal.App.4th 1412, 1421 [sentence imposed but execution suspended is an appealable order, if not challenged on appeal, is final and binding when probation is revoked].) For this reason, the trial court lacked jurisdiction to modify or change the sentence it ordered into execution after revoking defendant's mandatory supervision and denying probation. (*People v. Colado* (1995) 32 Cal.App.4th 260, 262-263; *Chagolla*, at p. 1049.)

Contrary to defendant's claim, he was not resentenced on transportation and the on-bail enhancement. He was only resentenced on the possession offense after the court reduced the offense from a felony to a misdemeanor pursuant to Penal Code section 1170.18.

Because the court imposed sentence and suspended execution, defendant's transportation conviction was final in 2012. The new definition of transportation does not apply to that conviction.

## II

### *The On-Bail Enhancement*

Defendant challenges the on-bail enhancement as no longer applicable because his felony possession conviction was reduced to a misdemeanor pursuant to Proposition 47 "for all purposes."

The phrase, " 'shall be considered a misdemeanor for all purposes,' " in Penal Code section 1170.18, subdivision (k) does not apply retroactively. (*People v. Rivera* (2015) 233 Cal.App.4th 1085, 1100.) For purposes of the on-bail enhancement, we consider the nature of the possession offense at the time it was charged. (*Id.* at p. 1101; see also *In re C.H.* (2016) 2 Cal.App.5th 1139, 1146.) It was charged as a felony so the on-bail enhancement applies.

### III

#### *The Sentence for Misdemeanor Possession*

Defendant also challenges the consecutive, eight-month term imposed for misdemeanor possession, arguing it is the same sentence imposed when the offense was a felony, a direct violation of the intent of Proposition 47 to reduce taxpayers spending on incarceration for misdemeanors. Defendant forfeited this contention.

“[C]omplaints about the manner in which the trial court exercises its sentencing discretion and articulates its supporting reasons cannot be raised for the first time on appeal.” (*People v. Scott* (1994) 9 Cal.4th 331, 356.) A meaningful opportunity to object exists “if, during the course of the sentencing hearing itself and before objections are made, the parties are clearly apprised of the sentence the court intends to impose and the reasons that support any discretionary choices.” (*Ibid.*)

Here, the court indicated that it had discussed its sentencing choices in chambers with counsel and invited comment on the record. Defense counsel only requested that the court impose concurrent, rather than consecutive, time for the misdemeanor. Defendant’s belated challenge on appeal is forfeited.

In any event, Penal Code section 1170.18, subdivision (e) provides that in resentencing after reducing an offense to a misdemeanor, imposition of a term longer than the original sentence is prohibited. Here, the term was the same, not longer.

DISPOSITION

The judgments are affirmed.

\_\_\_\_\_ HULL \_\_\_\_\_, Acting P. J.

We concur:

\_\_\_\_\_ MAURO \_\_\_\_\_, J.

\_\_\_\_\_ HOCH \_\_\_\_\_, J.